

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO

Claim No. CV 2015 – 03123

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT, CHAP. 2:01
REPUBLIC OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF A PARLIAMENTARY ELECTION FOR THE CONSTITUENCY
OF LA HORQUETTA/TALPARO HELD ON THE 7TH DAY OF SEPTEMBER 2015

AND

IN THE MATTER OF THE ELECTION PROCEEDINGS RULES, 2001

BETWEEN

BONIFACIO MAHABIR

Petitioner

AND

MAXIE CUFFIE

First Respondent

AND

THE RETURNING OFFICER FOR THE CONSTITUENCY OF
LA HORQUETTA/TALPARO (DEEMED TO BE A RESPONDENT BY VIRTUE OF SEC
107(2) OF THE REPRESENTATION OF THE PEOPLE ACT)

Second Respondent

APPEARANCES

Mr. Anand Ramlogan S.C., Mr. Wayne Sturge, Mr. Gerald Ramdeen, Ms. Jayanti Lutchmedial,
Mr. Douglas C. Bayley, Mr. Varun Debideen, Mr. Kent Samlal, Attorneys-at-Law for the
Petitioner

Mr. Douglas Mendes S.C., Mr. Michael A.A Quamina, Mr. Terrence Bharath, Ms. Elena Araujo,
Attorneys-at-Law for the Respondent.

RULING

Introduction

1. The Court has heard a Notice of Motion filed by the First Respondent seeking to have the Representation Petition dismissed on the ground that the Petitioner failed to serve Notice

of the Presentation of the Petition in the time prescribed by Section 110 of the *Representation of the People Act*¹.

2. In the course of this Ruling the Court considered whether in the exercise of the jurisdiction conferred by the *Representation of the People Act*², the Court had the power to enlarge or abridge timelines prescribed by the *Act*³.

Procedural History

3. On the 18th September, 2015 leave was granted to the Petitioner to file a Representation Petition pursuant to Section 52(2) of the *Constitution*⁴.
4. A defence was filed by Maxie Cuffie, the First Respondent on the 23rd October, 2015.
5. The decision to grant leave was appealed by the Respondents. However the Court of Appeal, on the 30th November, 2015, dismissed the Respondents' appeal.
6. When the matter was remitted to the High Court for the hearing of the Representation Petition, the First Respondents filed a Notice of Application on the 10th December, 2015, to have the Petition dismissed. It is the Notice of Motion filed on the 10th December, 2015 that now engages the Court's attention. The Notice of Motion was supported by affidavits of the First Respondent, Maxie Cuffie and Elena Araujo, attorney-at-law.
7. By order dated the 11th December, 2015, directions were given to the parties in respect of the filing of affidavits and submissions.
8. On the 14th January, 2016, the affidavit of attorney-at-law, Kent Samlal was filed in opposition to the Notice of Motion.

¹ The Representation of the People Act Ch. 2:01

² The Representation of the People Act Ch. 2:01

³ The Representation of the People Act Ch. 2:01

⁴ The Constitution Ch. 1:01

9. Parties filed Written Submissions and on the 3rd March, 2016 the Court heard supplemental *viva voce* submissions.

Facts

10. On the 7th September, 2015, General Elections were held in the Republic of Trinidad and Tobago. The First Respondent, Maxie Cuffie was the representative for the People's National Movement (PNM). The result was in favour of Maxie Cuffie and by extension the PNM. Bonifacio Mahabir was a cocoa farmer in the constituency of Talparo and was entitled to vote as an elector at the Elections of the 7th September, 2015
11. On the 18th September, 2015, attorneys-at-law for the Petitioner filed an Application under Section 52(2) of the *Constitution*⁵ for Leave to present an Election Petition. Leave was granted as sought on the 18th September, 2015.
12. At around 7:10 p.m. on the said 18th September, 2015, the Petitioner's Application for Leave to issue a Representation Petition was lodged with Assistant Registrar, Mr. Vigel Paul at the High Court of Justice, San Fernando⁶.
13. On 19th September, 2015, the Petition of Bonifacio Mahabir was left with Vigel Paul, Assistant Registrar of the Supreme Court, at around 5:30 p.m.
14. On the 19th September, 2015, the Petitioner's Petition was prepared out of an abundance of caution. The need to act with caution was motivated by the awareness of the Petitioner and his attorneys-at-law that the deadline for filing the Representation Petition fell on the 19th September, 2015, which was Saturday.

⁵ The Constitution Ch. 1:01

⁶ Paragraph 12 of the affidavit of Kent Samlal filed on the 14th January, 2016

15. The need for caution was expressed by Kent Samlal, learned attorney-at-law for the Petitioner in this way:

“Having regard to the fact that the deadline for filing of the Representation Petition for the constituency of La Horquetta/Talparo would have fallen to be the 19th September, 2015 that is eight (8) days after the Return of the Election Writ, the Petitioner’s Petition was prepared out of an abundance of caution provided to the Assistant Registrar of the High Court of Justice, San Fernando, Mr. Vigel Paul to see whether it could be immediately filed and served. Mr. Paul however indicated that whilst he could take custody of same, he could not file the documents until Monday...”

16. On the 19th September, 2015, at 5:30 p.m. Assistant Registrar, Mr. Vigel Paul took into his custody the Petition of Bonifacio Mahabir with the Supporting Affidavit⁷.
17. In his letter of the 22nd January, 2016 and addressed to Ms. Elena Araujo, Mr. Paul described the circumstances in which he received the documents on the 19th September, 2016:

“The documents were received by me in the lobby of the Supreme Court, Sub-Registry, San Fernando at the Information Desk. In accordance with the standard Protocol for receiving documents outside of the opening hours of the Registry...the Petition and the copies were endorsed as having been taken into my custody together with the date and time. Following the protocol, I would have indicated to the Petitioner’s attorney-at-law that the documents would be filed on Monday (the 21st) when the Registry opens and that they may attend then to collect their stamped copies. I do not recall any specific request comment or indication given by the Petitioner’s attorney-at-law at that time.

⁷ As stated in the letter dated 22nd January, 2016, from Mr. Paul to Ms. Elena Araujo. This letter is exhibited as “E.A.3” to the affidavit of Elena Araujo filed on behalf of the Respondent on the 22nd January, 2016.

As I was proceeding on vacation on September 21, 2015, I placed the documents in my office and sent an e-mail note to Ms. Tricia Bhagwandeensadho, Assistant Registrar, letting her know where they were so that she could process them when the Registry opened the following Monday...”⁸

18. Thereafter, on the 21st September, 2015, both the Application for Leave and the Petition were filed and the Petitioner paid the sum of twenty thousand dollars (\$20,000.00) such sum being the security of costs as required by Section 109 of the ***Representation of the People Act***⁹.
19. The First Respondent was served with the Petition of the 24th September, 2015.
20. On the 28th September, 2015, the Petitioner’s Notice of Presentation of the Petition and the nature of the Petitioner’s security were served on the First Respondent’s attorneys-at-law.
21. The issue to be determined by the Court is whether the Presentation of the Petition was done within the prescribed statutory time limit.

Submissions

22. Parties relied on the Written Submissions of their respective Senior Counsel.
23. Written Submissions were filed on behalf of Maxie Cuffie, the First Respondent on the 22nd January, 2016. By their Written Submissions learned Senior Counsel for the Respondent cited cases in support of their contention that, in election law, a breach of a time limitation will result in the dismissal of the Petition.
24. Learned Senior Counsel argued that the Petition of the Petitioner had been lodged with the Registrar in accordance with Section 107(4) of the ***Act***¹⁰ on the 19th September, 2015. By

⁸ Extract from the letter of Mr. Paul exhibited as “E.A.3”

⁹ The Representation of the People Act Ch. 2:01

¹⁰ The Representation of the People Act Ch. 2:01

virtue of such presentation, according to learned Senior Counsel, the Petitioner ought to have served Notice in accordance with Section 110 of the *Act*¹¹ on the Respondent by the 25th September, 2015. Because Notice had in fact been filed on the 28th September, 2015, there had been a fatal breach of the time limitation and the Petition ought to be dismissed.

Submissions for the Petitioner

25. Written Submissions were filed on behalf of the Petitioner on the 5th February, 2016.
26. At paragraph 16 of his Written Submissions, learned Senior Counsel identified the single issue before the Court in this way:

“Was the Petition presented when the Assistant Registrar took custody of the documents on Saturday 19th September, 2015 or when they were filed and returned on Monday 21st September, 2015. In the case of the former service was outside the statutory period whilst in the case of the latter the First Respondent was properly served.”

27. It was submitted by learned Senior Counsel for the Petitioner that Section 159(2)¹² of the *Act*¹³ provided “a complete answer” to the proposition of the First Respondent. Learned Senior Counsel for the Petitioner relied on Section 25(4) of the *Interpretation Act*¹⁴ in support of his argument.
28. Learned Senior Counsel relied also on Rule 7(2) of the *Election Proceedings Rules*¹⁵. This Rule provides:

¹¹ Ibid

¹² Section 159(2) of the Act provides: “Where anything required by or under this Act falls to be done on a Saturday or Sunday or on any excluded day that thing may be done on the next day not being a Saturday, a Sunday or one of the excluded days...”

¹³ The Representation of the People Act Ch. 2:01

¹⁴ The Interpretation Act Ch. 2:01

¹⁵ The Election Proceedings Rules – The Representation of the People Act Ch. 2:01

“The Petition shall be presented by filing it and at the same time leaving three (3) copies at the Registry.”

29. Learned Senior Counsel for the Petitioner contended that the argument of the First Respondent was contrary to the principle that access to justice should be denied only on the clearest terms¹⁶.
30. Learned Senior Counsel referred to the case of *Pritam Kaur v. S. Russel & Sons Ltd.*¹⁷, a running down action, in which the time for filing the Writ expired on a Saturday. The Plaintiff was allowed to file on the next working day.
31. Learned Senior Counsel referred to *Miller v. Bill* [2009] EWHC 2640 a decision of the High Court in England in which it was held to have been contrary to the provisions of the European Convention on Human Rights to strike out a Petition for failure to serve within the prescribed time.
32. Learned Senior Counsel submitted that the case of *Miller*¹⁸ is persuasive and should be applied by this Court.
33. At paragraph 73 of his Written Submission, learned Senior Counsel did not dispute the principle in *William v. Tenby*¹⁹. At page 76, it was submitted that the Petitioner did not dispute the importance of the election timetable or that there should be strict adherence to same.

¹⁶ See Written Submissions for the Petitioner at paragraph 31

¹⁷ *Pritam Kaur v. S. Russel & Sons Ltd.* [1973] 1 All ER 617

¹⁸ *Miller v. Bill* [2009] EWHC 2640

¹⁹ *Williams v. Tenby Corporation* [1879] 5 CPD 13 J

Response of the First Respondent

34. Learned Senior Counsel for the First Respondent filed Written Submissions in Reply on the 12th February, 2016.

35. At paragraph 1 of their Reply Submissions learned Senior Counsel for the First Respondent very usefully set out those aspects of the case on which parties were agreed and identified the following as the narrow issue for the Court’s determination:

“Whether the petition was presented to the Registrar on the 19th September, 2015 when it was delivered to him, as the First Respondent contends or on the 21st September, 2015 when the Petitioner says it was filed.”

36. In answer to the Submissions of the Petitioner, learned Senior Counsel for the First Respondent contended that the primary provision governing the presentation of an Election Petition is to be found in the **Act**²⁰ itself.

37. Learned Senior Counsel submitted that Rule 7(2) of the **Election Proceedings Rules**²¹ was entirely consistent with Section 107(4).

38. Learned Senior Counsel relied on the definition of “to file” in **Blacks Law Dictionary**:

“...to deliver a legal document to the Court clerk or record custodian for placement into the official record...”

39. Learned Senior Counsel for the First Respondent relied, as well, on four (4) separate authorities where the meaning of the term “filed” was considered.

- **Hunter v. Caldwell** 10 QBD 69
- **Re Commercial Union Assurance Co. Ltd.** [1899] 18 NZLR 585 at 588 per Stout CJ who expressed the view that filing meant “...depositing in a court office...”

²⁰ The Representation of the People Act Ch. 2:01

²¹ The Election Proceedings Rules – The Representation of the People Act Ch. 2:01

40. Of significance to the Motion before this Court was the decision in *Australia Electoral Commission v. Lalara* [1994] 53 FCR 156. In that case, O’Loughlin CJ considered the meaning of Clause 3 Schedule 4 of the *Aboriginal and Torres Strait Islander Commission Act* 1989 which provided for the filing of an Election Petition within forty (40) days after the end of the election period. CJ O’Loughlin said:

“...there can be no doubt that the petition ...was filed on the 2nd March, 1994. That was the date upon which the physical act of delivery of the petition to a proper officer of the Registry of the Court took place...”²²

41. Learned Senior Counsel argued further that filing meant that the litigant did all that was in its power.

42. Learned Senior Counsel referred to *Hammond v. Haigh Castle Ltd.*²³ where Sir John Donaldson defined “*present*” in this way:

“In our judgment, a claim is presented to a tribunal when it is received by the tribunal whether or not it is dealt with immediately upon receipt... Thus a claim delivered to the tribunal office post on a Saturday is presented on that day even if not registered before the following Monday.”²⁴

43. There was no dispute that Notice was served within five (5) days of the 21st September, 2015, allowing for Republic Day on the 24th September, and the intervening Saturday and Sunday.

²² Australia Electoral Commission v. Lalara [1994] 53 FCR 156 at page 163 A-3

²³ Hammond v. Haigh Castle Ltd. [1973] ICR 148

²⁴Ibid at page 151 A-B

Law

Statute

The Constitution of Trinidad and Tobago

44. Section 52 is set out below:

52. (1) Any question whether-

- (a) any person has been validly appointed as a Senator or validly elected as a member of the House of Representatives;*
 - (b) any Senator or member of the House of Representatives has vacated his seat or is required, under the provisions of section 43(3) or section 49(3), to cease to exercise any of his functions as a Senator or as a member of the House of Representatives; or*
 - (c) any person has been validly elected as Speaker of the House of Representatives from among persons who are not Senators or members of the House of Representatives, shall be determined by the High Court.*
- (2) Proceedings for the determination of any question referred to in subsection (1) shall not be instituted except with the leave of a Judge of the High Court.*
- (3) An appeal shall lie to the Court of Appeal from-*
- (a) the decision of a Judge of the High Court granting or refusing leave to institute proceedings for the determination of any question referred to in subsection (1);*
 - (b) the determination by the High Court of any such question.*
- (4) No appeal shall lie from any decision of the Court of Appeal given in an appeal brought in accordance with subsection (3).*

Representation of the People Act Chap 2:01

45. All relevant sections are set out hereunder.

106.(1) The following questions shall be referred to and determined by the High Court in accordance with sections 106 to 129:

- (a) *where leave has been granted under section 52(2) of the Constitution, any question whether any person has been validly appointed as a Senator or validly elected as a member of the House of Representatives; and*
- (b) *any question whether any person has been validly elected as a member or to an office of a Municipal Council or of the Tobago House of Assembly.*
- (2) *Every such reference shall be by a petition, in this Act referred to as a representation petition.*
- (3) *A petition complaining of no return or an insufficient return shall be deemed to be a representation petition.*

107.(1) A representation petition may be presented by any one or more of the following persons:

- (a) *in respect of an appointment to the Senate, by any person who on the date of the appointment of the person to whom the petition relates, was entitled to vote as an elector at a Parliamentary election;*
- (b) *in respect of an election or return of an election or return to the House of Representatives or to a Municipal Council or to the Tobago House of Assembly, by –*
 - (i) *a person who had a right to vote at the election; or*
 - (ii) *a person validly nominated as a candidate at the election.*
- (2) *The person whose appointment, election or return is complained of is hereinafter referred to as the respondent; but, if the petition complains of the conduct of a Returning Officer or Election Clerk, the Returning Officer or Election Clerk shall for the purposes of this Part be deemed to be a respondent*
- (3) *The petition shall be in the prescribed form, state the prescribed matters and be signed by the petitioner, or all the petitioners if more than one.*
- (4) *The petition shall be presented by delivering it to the Registrar.*
- (5) *The Registrar shall send a copy of the petition –*
 - (a) *in the case of a petition questioning the appointment of a person to the Senate, to the Attorney General; and*

(b) *to such other persons as may be prescribed,*

and shall cause the petition to be published in the prescribed manner.

(6) *The petition shall be served in such manner as may be prescribed.*

108.(2) *Subject to this section, a petition questioning an election or return shall be presented within eight days after the return has been made of the member to whose election the petition relates.*

109.(1) *At the time of presenting a representation petition or within three days afterwards the petitioner shall give security for all costs which may become payable by him to any witness summoned on his behalf or to any respondent.*

(2) *The security shall be—*

(a) *in the case of a petition relating to membership of the Senate or of the House of Representatives, an amount of twenty thousand dollars; and*

and shall be given in the prescribed manner by recognisance entered into by any number of sureties not exceeding four or by a deposit of money, or partly in one way and partly in the other.

110. *Within the prescribed time, not exceeding five days after the presentation of the petition, the petitioner shall, in the prescribed manner, serve on the respondent a notice of the presentation of the petition and of the nature of the proposed security, and a copy of the petition.*

144. *The Rules Committee established by the Supreme Court of Judicature Act may make Rules of Court prescribing any matter of procedure that is necessary or expedient for the purposes of any of the provisions of this Act.*

159.(1) *In reckoning time for the purpose of this Act or of the Rules made thereunder Saturdays and Sundays shall be included; but Christmas Day, Good Friday and any other public holiday shall be excluded.*

(2) *Where anything required by or under this Act to be done falls to be done on a Saturday or Sunday or on any excluded day, that thing may be done on the next day not being a Saturday, a Sunday or one of the excluded days.*

The Election Proceedings Rules

- 7(1) *A representation petition shall be in the form set out as Form No. 1 in the Schedule or a form to the like effect with such variations as the circumstances may require, and state –*
- (a) *the qualification of the petitioner to present the petition;*
 - (b) *when the petition relates to an election, the date and result of such election and in the case of a parliamentary election petition, the date on which the return was made to the Chief Election Officer of the member declared to have been elected;*
 - (c) *the date from which the time for bringing the petition runs; and*
 - (d) *the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved,*
- and shall conclude with a prayer setting out particulars of the relief claimed.*
- (2) *The petition shall be presented by filing it and at the same time leaving three copies at the Registry.*
- (3) *The Registrar shall cause the petition to be published as soon as practicable in the Trinidad and Tobago Gazette and in two daily newspapers.*
- (4) *The Registrar shall send a copy of the petition –*
- (a) *in the case of a petition questioning the appointment of a person to the Senate, to the Attorney General and the Clerk of the Senate;*
 - (b) *in the case of a petition questioning the election of a person to the House of Representatives, to the Clerk of the House or Representatives and the Chief Election Officer;”*
- 8.(1) *Within five days after the presentation of a representation petition the petitioner shall serve on the respondent in accordance with subrule (3), a notice of the presentation of the petition and of the nature of the security which the petitioner proposes to give, together with a copy of the petition.*
- 8.(3) *Any document required to be served on a party may be served—*
- (a) *in any manner in which a writ of summons may be served;*
 - (b) *in the manner provided by section 142(1) of the Act; or*

- (c) *by delivering it or sending it by post to any Attorney-at-law who appears, from any document filed, to be acting for the party.*

15.(1) *An application by a respondent to stay or dismiss a representation petition before the day fixed for the trial shall be made by motion.*

20.(1) *Any period of time prescribed or limited by the Act shall not be enlarged by order or otherwise, but save as aforesaid and subject to section 159 of the Act, the provisions of Order 3 of the Rules of the Supreme Court shall apply to any period of time prescribed by these Rules.*

(2) *Where any period of time limited by the Act for presenting a petition or filing any document expires on a day (not being a day mentioned in section 159(2) of the Act) on which the Registry is closed, the petition or document shall be deemed to be duly presented or filed if it is filed on the next day on which the Registry is open.*

Interpretation Act Chap 3:01

46. With regard to the computation of time, Section 25(4) of the ***Interpretation Act***²⁵ provides:

25.(4) *Where the time limit by any law for the doing of anything expires or falls upon a Saturday, Sunday or a public holiday, the time extends to and the things may be done on the first following day that is not a Saturday, Sunday or a public holiday.*

Authorities cited on behalf of the First Respondent

Williams v. Tenby Corporation (1879) 5 CPD 135

47. In ***Williams v. Tenby Corporation*** Grove J considered the effect of the Municipal Elections Act which required that the presentation of an election Petition and security be served on the Respondent. The election Petition had been removed from the file on the ground that

²⁵ The Interpretation Act Ch. 3:01

notice of the Representation and security had not been served on the Respondent and that there had been no affidavit setting out the time and manner of service of the Notices.

48. On appeal the court held that it was a condition precedent to the trial of a municipal election Petition that within five days after the presentation of it, the Petitioner should in the prescribed manner serve on the respondent a Notice of presentation, and the nature of the proposed security, and a copy of the Petition as required in the Corrupt Practices (Municipal Elections) Act 1872.

49. In construing Section 13(2) of the Act, Grove J considered whether the requirement of service was directory or not. He had this to say at page 136:

*“Is that directory, or a condition precedent to the petition being entered? It seems to me to be a condition precedent, and indeed the Solicitor General admits that it is peremptory and could not be dispensed with by a judge or the Court”*²⁶

50. At page 137, Grove J explained the philosophy on which the Act was built. He said:

*“...The meaning of the enactment is that the petition shall not be kept long hanging over the heads of persons elected in municipal corporations. The petition must be presented in twenty-one days, and during that time the petitioners should read the Act and ascertain what they have to do. We have found great inconvenience in ordinary cases where the Court have[sic] power to extend the time, for we are much occupied with applications for extension of time, and in many cases it is most important that the time of proceeding should be limited, and that persons should know when they are safe.”*²⁷

Devan Nair v. Youn Kuan Teik [1967] 2 WLR 846

51. This was a decision of the Privy Council from the Federal Court of Appeal of Malaysia.

²⁶ Williams v. Tenby Corporation (1879) 5 CPD 135 at page 136

²⁷ Ibid at page 137

52. Their Lordships considered Rule 15 of the Election Offences Ordinance which required that the service of a Petition could be effected personally or by registered post to an address left at the office of the Registrar or by notice published in the Gazette. Service was to be effected within ten days of the presentation of the Petition. As it transpired, there was no personal service and no address was left at the office of the Registrar. The Petitioner was fourteen (14) days late in publishing a notice in the Gazette. The Petition was dismissed.

53. Lord Upjohn had this to say at page 855 B-C

“So the whole question is whether the provisions of rule 15 are “mandatory” in the sense in which that word is used in the law, i.e., that a failure to comply strictly with the times laid down renders the proceedings a nullity; or “directory”, i.e., that literal compliance with the time schedule may be waived or excused or the time may be enlarged by a judge. If the latter, it cannot be doubted that the respondent has waived literal compliance by taking a step in the action, that is, by asking for particulars of the petition...”

54. Lord Upjohn at page 855 D-H went on to say

“This question is a difficult one, as is shown by the conflict of opinion in the courts below.

The circumstances which weigh heavily with their Lordships in favour of a mandatory construction are:

(1) *The need in an election petition for a speedy determination of the controversy, a matter already emphasised by their Lordships. The interest of the public in election petitions was rightly stressed in the Federal Court, but it is very much in the interest of the public that the matter should be speedily determined.*

(2) *In contrast, for example, to the Rules of the Supreme Court in this country, the rules vest no general power in the election judge to extend the time on*

the ground of irregularity. Their Lordships think this omission was a matter of deliberate design. In cases where it was intended that the judge should have power to amend proceedings or postpone the inquiry it was expressly conferred upon him: see, for example, rules 7, 8 and 19.

(3) *If there is more than one election petition relating to the same election or return, they are to be dealt with as one (rule 6). It would be manifestly inconvenient and against the public interest if by late service in one case and subsequent delay in those proceedings the hearing of other petitions could be held up.*

(4) *Respondents may deliver recriminatory cases (rule 8) and speedy service, in order that the respondent may know the case against him, is obviously desirable so that he may collect his evidence as soon as possible.*²⁸

55. At page 856 B, Lord Upjohn referred to the case of **Williams v. Tenby Corporation** and said:

*“On the whole matter their Lordships have reached the conclusion that the provisions of rule 15 are mandatory, and the petitioner’s failure to observe the time for service thereby prescribed rendered the proceedings a nullity”*²⁹

Ezechiel Joseph v. Alvina Reynolds HCVAP 2012/2014

56. This was a decision by Sir Hugh Rawlins CJ from the Eastern Caribbean Supreme Court in Saint Lucia.

57. The Petitioners challenged the 1st December, 2011 election and in response, the Respondents filed and served Applications to strike out the Petitions on the grounds among

²⁸ Devan Nair v. Youn Kuan Teik [1967] 2 WLR 846 at 855

²⁹ Ibid at page 856 A-B

others, that the Petitioners failed to provide the security required by the Elections Act and by the House of Assembly (Election Petition) Rules.

58. The Court held that the rules of civil practice and procedure are only applicable to election Petition proceedings to the extent that there is an express statutory provision that permits the rules to apply and further that the CPR 2000 cannot replace or amend any constitutional or statutory provisions for election proceedings.
59. In looking at the jurisprudence on the essential statutory provision, Sir Hugh Rawlins CJ had his to say

[16] “A plethora of cases decided over the year in the courts for this jurisdiction, have consistently held that election proceedings invoke a very peculiar and special jurisdiction of the court. According to that jurisprudence, the provisions that are made and the time limits prescribed in the elections legislation enacted by Parliament, in particular, provide comprehensive and exclusive statutory scheme, with mandatory procedural rules for challenging the validity of an election or the return of a candidate as the elected representative in an election. Election petitions must therefore be brought strictly in accordance with the requirements of the statutes. Failing this, a petition would be a nullity and would be struck out as such.

*[17] Our courts have consistently adopted this strict approach to election petitions, drawing upon the jurisprudence from the Judicial Committee of the Privy Council in cases such as **Therberge v. Laudry**, **Patterson v. Solomon** and **Devan Nair v. Yong Kuan Teik**.*

[20] In keeping with the strict approach, our courts have generally insisted that the provisions in elections legislation must be strictly complied with because the paramount public interest is that election petition

challenges should be determined as quickly as possible so that the assembly and the electors should know their rights at the earliest possible time. Our election courts have consistently stated that they have little or no discretion to waive non-compliance with the applicable statutory requirements. Accordingly, the consistent result is that failure to comply is fatal to the petition rendering it a nullity, unless the court finds that the failure goes to form. The jurisprudence in our courts states that time and other electoral proceedings statutory requirements are conditions precedent to instituting a proper electoral challenge, which are mandatory and peremptory. The election court has no power to extend time or allow amendments filed out of time unless election legislation so provides”

Allen v. Wright (No 2) (1960) 2 WIR 102

60. This was a decision made by Chief Justice Hallinan of the Federal Supreme Court of the West Indies.
61. It concerned the time within which an election Petition was required to be served. The Petition was presented to the Court on the 18th August, 1959 but was not served until 17th September 1959. On the 7th September, 1959, the Petitioner had applied ex parte for an extension of the time to fourteen days from the 9th September, 1959. The application was heard on the said 9th September and an order was made extending the time for service.
62. On the 15th October, 1959, the Respondent obtained an order setting aside service of the Petition, as well as to have the petition taken off the file of the court or to be struck out.
63. The Federal Supreme Court held that the provision regarding time is a matter of substantive law and cannot be enlarged by the Court. The appeal was dismissed with costs.

***Sabga v. Solomon* (1963) 5 WIR 66**

64. This was a decision of the Court of Appeal of Trinidad and Tobago. The Petitioner had presented a representation Petition praying that the election of the Respondent be declared void on several grounds. A complaint was also made against the returning officer. The Petition was served on the Respondent but not on the returning officer who was, by reason of the complaint made against his conduct was deemed to be a Respondent by virtue of section 106 (2) of the Representation of the People Ordinance 1961. It was contended that the Petition was a nullity because no security for costs had been given in accordance with section 108 of the Ordinance.
65. Mc Shine Ag C.J and Peterkin J held that the deposit of a certified cheque as security for costs was not a deposit of money within the meaning of s.108 of the Ordinance and as no security was given as was required by that section no further proceedings should be had on the Setition.
66. Mc Shine, Ag. C.I had this to say at page 68 H

“It is argued that in the strict sense of the term the deposit of a certified cheque is not “giving security” “by a deposit of money”. That whilst it is granted that in certain circumstances a cheque may be the equivalent of money a cheque is merely an order on a banker to pay the sum of money stated therein, and is not the equivalent of a deposit of money in accordance with the section. It is further argued that money in the context must be given its ordinary meaning, i.e., cash, coin of the realm or currency notes of the state.”

***Stewart v. Newland and Edman* (1972) 19 WIR 271**

67. This was a decision of Rowe J, sitting in the Supreme Court of Jamaica in this case, the Petition was not served on the Respondent within the time, limited by statute. There was

an application for an extension of time within which to serve the Petition, however, this application was made after the expiry of the time, limited for service by service. The filing of the Petition had been carried on news reports, in newspapers and on television.

68. The question to be determined was whether the court had the jurisdiction to extend time for the service of the Petitions and whether the publication in the daily newspaper and the radio and television newscasts be deemed sufficient service.
69. Rowe J held that Section 6 of the Election Petitions Law, which requires that the documents named therein “shall, within ten days after the presentation of the Petition, be served by the Petitioner on the Respondent”, is mandatory and must be strictly complied with. The court therefore, had no jurisdiction to extend the time for service of the Petition.

Shemilta Joseph v. Sherfield Bowen and Clovelle Gardner (Suit No. 40 of 1995)

70. This case concerned the elections held in Antigua and Barbuda on the 9th March, 1999. The Petitioner filed the Petition on the 16th March, 1999. The Respondent was served with the Petition. However, neither the Notice of presentation nor the nature of the security were attached. The court ruled that the Petition was invalid.

George Prime v. Elvin Nimrod (CDVHCV 2003/0551)

71. In these proceedings Pemberton J adjudicated on an election Petition in the Supreme Court of Grenada in the year 2003 and held that the Petitioner’s failure to serve Notice of the presentation of the Petition and the nature of the security, together with a copy of the Petition, within the stipulated five day period, nullified the Petition.
72. The learned judge, at paragraph 30, said

“...The first as stated is that the Petitioner did not within five (5) days after giving security, serve on the Respondents or any of them or upon the Director

of Public Prosecutions a notice of Presentation of petition and the nature and amount of the security which he has given, together with a copy of the petition and of the affidavit accompanying any recognizance. There is no dispute. Mr. Prime did not do this. Second the UK Election Rules direct the Petitioner to file an affidavit of service of the Petition as soon as practicable after service is effected. I do not think that I need a deliberation on this issue. I think that the default in complying with Rule 5(1) is sufficient to render me unable to hear this petition any further... ”

Daven Joseph v. Chandler Codrington (ANUHCV 2009/0147)

73. General elections were held on 12th March, 2009 in Antigua and Barbuda. Election Petitions were filed on 23rd March, 2009. The Respondent sought to have the Applications dismissed on the ground on that the Petitions were not filed within the mandated period of seven days and that there was no service of the Petition within the five day period.

74. At paragraphs 52 and 53, Blenman J had this to say

*“[52] In **Ferdinand Frampton et al v. Ian Pinard et al Claim No. 0149-0154 of 2005**, Rawlins J as he then was, at paragraph 14 of his erudite judgment quite helpfully enunciated the following:*

“The general principles state that time limits set in elections legislation are conditions precedent, mandatory and peremptory. They must be strictly followed. A petitioner must file and perfect the petition within the time limited in the legislation for the presentation of the petition. A petition must be served within the prescribed time”

I accept and apply those propositions of law.

[53] The Court pauses to note that the wording of the Act says “within” and not “after” ... It is clear therefore that in order for the petitions to be held to have been properly presented they, of necessity, must have been filed within 7 days of the return that is within 7days of the

13th March 2009. These provisions are mandatory and not procedural.”

Authorities cited on behalf of the Petitioner

Miller v. Bull (returning officer of Herefordshire Council) and others [2009] EWHC 2640

75. On the 25th June 2009 an election was held in Leominster Town Council, Southward. The returning officer declared that Mr. Ferari had been elected without contest.
76. Owing to a series of errors on the part of the Petitioner, he was late in serving the requisite Notice of the presentation of his Petition. The Petitioner applied for an extension of time to comply with Rule 6 of the Election Petition Rules.
77. In determining this issue the Court considered the provisions of the Election Petition (Amendment) Rules of 2003, which prohibited extensions of time under Rule 6. The Court considered that the amendment effected by the Election Petition Rules, 1960 Rule 19, which resulted in the prohibition of an extension of time under Rule 6 of the 1960 Rules, was incompatible with the European Convention on Human Rights 1950.

Pritam Kaur (administratrix of Bikar Singh (deceased)) v. S Russell & Sons Ltd [1973] 1 All E.R. 617

78. The salient aspects of this case are shown in the headnote, which is reproduced below:

“The Plaintiff’s husband was killed on the 5th September 1967 and on the 7th September 1970, the Plaintiff issued a Writ against her husband’s employer’s claiming damages for negligence and breach of statutory duty under the Fatal Accidents Act 1846 to 1959 and the Law Reform (Miscellaneous Provisions) Act 1934. It was impossible for the Plaintiff to issue her Writ on the 5th or 6th September, 1970, for being Saturday and Sunday the Court offices were closed on those days ...”

79. The Court allowed her to issue same on the next working day. The Court held as follows:

“(ii) *Where a statute prescribed a period within which an act was to be and the act was one which only be done on a day which the court offices were open, the period would be extended, if the Court office was closed for the whole of the last day of the prescribed period, until the next day on which the Court office were open...*”

Interpretation Cases

Hunter v. Caldwell 10 Q.B. 69

80. Lord Denman CL defined the term “filing” in this way:

“...the word “filing” in reference to matters of practice, is very commonly used to express the duty of bringing to the proper office, as the case may be, writs, pleadings, affidavits and other such matters for safe custody, or enrolment... It was not contended that “filing” was the duty of the attorney in any other sense than this; nor could it be: if filing means only the putting of a file in the office, or doing anything with it after it arrives there, that clearly must be the duty of the officer, and cannot be chargeable on the attorney; he cannot, indeed, be allowed to meddle with it for that purpose”

Re The Commercial Union Assurance Company (Limited) (1899) 18 NZLR 585

81. The Court held that a statutory declaration verifying a copy of the last balance sheet of a company, and deposited with it in the office of a Registrar of the Supreme Court, in compliance with section 11 of the Fire and Marine Insurance Companies Act 1989, was a declaration filed in a Court within in the meaning of the first exemption under the heading of “affidavits and declarations” in the third schedule of the Stamp Act 1882 and is therefore exempt from stamp duty.

82. Stout CJ , at page 588 of the judgment had this to say

“What is the meaning of the word ‘filed’? Filing, it has been said, is the means adopted of keeping court documents: see Tomlin’s Law Dictionary and Sweet’s Dictionary. The method of filing, or of putting the documents on a file of thread, wire or string, has, in all courts, it is said, but the English Bankruptcy Court, being discontinued, but the word has been kept. In its primitive meaning ‘filing’ means putting the documents on a file...but now documents are kept together by other methods. ‘Filing’ now really means depositing in a court office. It has, in my opinion, acquired this secondary meaning; and in Wharton’s Law Lexicon it is said that ‘to file’ means to deposit at an office... I am bound, in my opinion, to interpret the word ‘filed’ in its popular and usual sense. In none of the Supreme Court offices of this colony are any documents filed, using that word in its primitive sense”

Leicester v. Yolland, Husson & Birkett Limited [1908] 1 Ch 152

83. In this case Cozens-Hardy MR, at page 157 said

““Filed with the registrar” really means “supplied to the registrar for registration” or “furnished to the registrar for registration.”

Australia Electoral Commission v. Lalara (1994) 53 FCR 156

84. The applicant in these proceedings filed a Petition seeking an order that the election proceedings for ***Aboriginal and Torres Strait Islander*** be declared void on account of illegal practices.

85. The Applicant’s Petition was handed to the relevant Registry on the 2nd March, 1994, the last day on which the Petition could be lodged. It was however not stamped until the following day and bore the stamp for the 3rd March, 1994.

86. The Respondents contended that the Petition was not filed within the time prescribed by *Aboriginal and Torres Strait Islander Commission Act* 1899.
87. Justice O’Loughlin sitting in the General Division held that the Petition had been filed on the 2nd March, 1994. In the course of his decision, Loughlin J referred to the words of Stoute J in *Re Commercial Union Assurance Co. Ltd.* [1899] 18 NZLR 585 and had this to say at page 163 B-C.

“That passage from the judgment of Stout CJ has been quoted with approval in the New South Wales Court of Appeal in Beecham (Australia) Pty Ltd v. Roque Pty Ltd (1987) 11 NSWLR 1. It was also followed in Lynch v. Murfitt (1985) Tas R (N C) 176, where it was held that a summons was "filed" when it was handed to the clerk in the office of the court. In my opinion there can be no doubt that the petition in this matter was filed on 2 March 1994. That was the date upon which the physical act of delivery of the petition to a proper officer of the Registry of the Court took place; that was the date upon which the appropriate fees were handed over to that officer. It would be absurd if the acknowledged mistake of an officer of the Registry (by inserting the incorrect date) reacted to the detriment of an innocent litigant.”

Hammond v. Haigh Castle & Co. Ltd. [1973] ICR 148

88. An employee was dismissed by his employers on the 31st July, 1972. He consulted a professional association, of which he was a member, regarding compensation for unfair dismissal. The employee was told by the association that the necessary form of complaint must be received by the industrial tribunal within one month of the dismissal. On the 25th August the employee sent the form to the association, which posted it to the tribunal where it arrived on the 30th August 1972.

89. On hearing the complaint of unfair dismissal, the industrial tribunal held that the complaint was out of time since the form of complaint should have been presented to the tribunal within four weeks and not one month of the effective date of termination, namely the 27th August, 1972 in accordance with Rule 2(1)(a) of the schedule to the Industrial Tribunals Regulations 1972 and that they could not extend the time under the provision because it would have been practicable to have presented the complaint within the relevant period.
90. The employee appealed. The appeal was dismissed and the court held that the complaint was clearly out of time.
91. Sir Donaldson at page 151 said

“... thus a claim delivered to the tribunal office by post on a Saturday is presented on that day, even if not registered before the following Monday”

Hetton Victory Club v. Swainston [1983] ICR 345

92. Waller LJ had this to say at page 345

“The Shorter Oxford English Dictionary defined “present” as “To deliver (a document...) to the proper quarter, for acceptance” or “to bring...(a thing) before on into the presence of a person, or put (it) into hands, for acceptance”

“In my opinion it is difficult to say that presentation requires any action on the part of the body to which presentation is made. Delivery of a document to the proper quarter does not require action on the part of anybody at the proper quarter.

Reasoning and Decision

93. The single issue that arises for the Court's determination is whether the Petitioner, by his attorneys-at-law presented his Petition to the Registrar, as required by Section 107(2), when it was given to Assistant Registrar, Vigel Paul on Saturday 19th September, 2015 or whether presentation was made on the 21st September, 2015 when the Petition was affixed with the stamp of the Court.
94. The Parties have agreed on the timetable of events in this matter. It is not disputed that as a result of the general election held in Trinidad and Tobago on the 7th September, 2015, the First Respondent, Maxie Cuffie had been the successful candidate for the constituency of La Horquetta/Talparo. The Petitioner was entitled to vote at the General Election and was entitled under Section 107(1) of the ***Representation of the People Act***³⁰ to seek leave to file a Representation Petition.
95. The Petitioner, minded to institute proceedings under the ***Representation of the People Act***³¹, had been unaware of the date of the Return of the Election Writ and became aware during the day, on the 18th September, 2015, that the date of the return was the 11th September, 2015.
96. After business hours on the 18th September, 2015, the Petitioner, along with five (5) other unsuccessful candidates moved this Court for Leave under Section 52(2) of the ***Constitution***³². Having been successful in obtaining leave, the Petitioner's concern was to meet the deadline prescribed by the conjoint effect of Section 107(4) and Section 108(2)

³⁰ The Representation of the People Act Ch. 2:01

³¹ The Representation of the People Act Ch. 2:01

³² The Constitution Ch. 1:01

of the *Representation of the People Act*³³ that a Representation Petition ought to be presented to the Registrar within eight (8) days of the Return.

97. In his Affidavit, filed on behalf of the Petitioner on the 14th January, 2016, Kent Samlal, attorney-at-law for the Petitioner, alluded to the decision of the Petitioner and his advisors to act out of an abundance of caution, by attempting to have the Petition filed on Saturday 19th September, 2015.
98. On that day, learned attorneys-at-law for the Petitioner visited the Hall of Justice of the Sub-Registry, San Fernando and were met by Assistant Registrar Mr. Vigel Paul. Mr. Paul took the documents into his custody and made an endorsement to that effect in his handwriting. He explained to attorneys-at-law for the Petitioner that it was not possible to file the documents since the requisite Registry staff were not at work on Saturday. He explained that he would place the documents on his desk and send an e-mail to his colleague Mrs. Bhagwandeem-Sadhoo, who would process the documents on the following Monday, since he would be on leave.
99. The document which was delivered to Mr. Paul was in fact stamped with the Court's stamp on Monday 21st September, 2015. This document, bearing the hand-written endorsement of Mr. Paul may be found on the Court's file, as an official document.
100. It has also been accepted, by both parties, that Notice of the Presentation of the Petition was served on learned instructing attorney-at-law for the First Respondent on Monday 28th September, 2015³⁴.
101. There is therefore no dispute that the Petitioner had served Notice of the Presentation of the Petition on the 28th September, 2015. The question that arises is whether such service

³³ The Representation of the People Act Ch. 2:01

³⁴ Paragraph 19, of the affidavit of Kent Samlal filed on January 14th, 2015.

- had been made within five (5) days of the Presentation of the Petition to the Registrar. It is accepted by both sides that service would have been within the time contemplated by Section 110 of the *Representation of the People Act*³⁵ if the Petition had been presented on the 21st September, 2015. However, it is also accepted that the Petitioner's service of the Notice Presentation of the Petition would have been out of the prescribed time, if the Petition had been presented to the Registrar on Saturday 19th September, 2015.
102. In the context of Election Petitions, the authorities speak with one voice that the Court will strictly apply the time lines which are prescribed by the statute which confers on the Court the jurisdiction to hear the Election Petition. See *Devan Nair v. Youn Kuan Teik*³⁶ a decision of the Privy Council.
103. In my view, two (2) reasons are discernible, as the underlying rationale for such apparent rigidity in the application of the timelines, which are prescribed in the *Representation of the People Act*³⁷. The first of these was stated by Sharma JA (as he then was) in *Chaitan and Peters v. AG*³⁸. The judgment of Sharma JA represented the minority view in that case. However, Sharma JA set out the historical context of the Election Petition, emphasising that then the Election Petition is a creature of statute and if such a Petition is not consonant with the statute, it cannot have legal existence.³⁹
104. Sharma JA, noted as well that the Court's jurisdiction to determine an election petition is one that was historically exercised only the legislature⁴⁰.

³⁵ The Representation of the People Act Ch. 2:01

³⁶ *Devan Nair v. Youn Kuan Teik* [1967] 2 WLR 846

³⁷ The Representation of the People Act Ch. 2:01

³⁸ *Chaitan & Peters v. AG* [2001] 63 WIR 244

³⁹ See Sharma JA in *Chaitan & Peters v. AG* [2001] 63 WIR 244 at page 298

⁴⁰ See Sharma JA in *Chaitan and Peters v. AG* [2001] 63 WIR 244 at page 300

*“The legislature has historically asserted its right to determine its own membership. The jurisdiction to determine the validity of an election to a legislative body is not a matter on which the judiciary historically exercised its jurisdiction.”*⁴¹

105. For this reason, according to Sharma JA, the status of a Court or tribunal authorised to adjudicate on Election Petitions is dependent on the legislation that endows it with such authority⁴². It seems that for this reason, the Court would not be invested with the discretion, which it ordinarily exercises, to enlarge or to abridge the timelines prescribed in an empowering statute.
106. The second and more practical reason was stated by Lord Upjohn in the Privy Council decision of *Devan Nair v. Youn Kuan Teik*⁴³, where Lord Upjohn emphasised that there was a need in the Election Petition for a speedy determination in the public interest⁴⁴.
107. Having regard to these authorities, it was accepted by both parties that the failure of the Petitioner to serve Notice of the Presentation of the Petition within the prescribed time would deal a fatal blow to the Petition.
108. The Court now proceeds to consider, having regard to the undisputed facts, whether the Petition was presented to the Registrar of the Supreme Court on Saturday 19th September, 2015 or on Monday 21st September, 2015.
109. Mr. Ramlogan, learned Senior Counsel for the Petitioner, argues that presentation took place when the Petition was filed on the 21st September, 2015. In so contending, Mr.

⁴¹ Chaitan & Peters v. AG [2001] 63 WIR 244 at 300a

⁴² Sharma JA in Chaitan & Peters v. AG [2001] 63 WIR 244 at page 300 f-g

⁴³ Devan Nair v Youn Kuan Teik [1967] 2 WLR 846

⁴⁴ Devan Nair v Youn Kuan Teik [1967] 2 WLR 846 at page 855 D

Ramlogan relies on Rule 7 (2) of the ***Election Proceedings Rules***⁴⁵, which provides as follows:

“(2) The Petition shall be presented by filing it and at the same time leaving three (3) copies at the Registry...”

Mr. Ramlogan, S.C. contended therefore that the material date was when the document was filed that is when it was affixed with the Court’s stamp.

110. In response learned Senior Counsel, Mr. Mendes and Mr. Jeremie produced numerous authorities on the meaning of the term “*to file*”. It was their contention that filing had been achieved when the litigant presented the document for filing, regardless of whether it was stamped. Accordingly, learned Senior Counsel noted that under the ***Civil Proceedings Rules (CPR)***⁴⁶ 1998 filing could take place by posting a document by registered mail or by sending it by facsimile transmission.⁴⁷ Thus Part 2.3 of the ***Civil Proceedings Rules (CPR)***⁴⁸ defines filing in this way:

““filing”, in relation to a document, means delivering, sending it by facsimile transmission or posting it to the appropriate court office and is not completed until the document is received at the office;”

111. Mr. Ramlogan, S.C. responded in his supplemental *viva voce* submissions by arguing that three (3) elements were present in the act for filing.

- lodging
- receipting, as is evidenced by the registry staff affixing the Court’s stamp

⁴⁵ The Election Proceedings Rules – The Representation of the People Act Ch. 2:01

⁴⁶ The Civil Proceedings Rules 1998

⁴⁷ The Civil Proceedings Rules 1998 Part 2.3

⁴⁸ The Civil Proceedings Rules 1998

- the returning of the stamped copies by the Registrar to the litigant.

In this way, learned Senior Counsel distinguished the Australian case of *Lalara*⁴⁹, where the relevant statute used the word “*lodged*” instead of “*filed*”.

112. Mr. Ramlogan, S.C. argued as well that the *Representation of the People Act*⁵⁰ required delivery to the Registrar and not to any Deputy or Assistant, Mr. Ramlogan argued that where the statute permitted a deputy or an assistant to exercise the powers of the Registrar of the Supreme Court, such permission was conferred expressly.
113. In my view, it is artificial to distinguish between the Registrar of the Supreme Court and her Deputies and Assistants. Mr. Ramlogan, S.C. himself recognised that the *Carltona principle*⁵¹ construed the act of a ministerial official as the act of a Minister of Government. In my view the very principle must perforce govern the functions of the Registrar of the Supreme Court, who, being one person, serves countless litigants in the jurisdiction of Trinidad and Tobago. It may be for this reason, that Section 68 of the *Supreme Court Judicature Act*⁵² makes the following provision.

68. (1) *There shall be a Deputy Registrar of the Supreme Court.*
- (2) *There shall be at least three Assistant Registrars of the Supreme Court, one of whom shall be for Port-of-Spain, one for San Fernando and one for Tobago.*
- (3) *The Deputy Registrar and every Assistant Registrar shall be an Attorney-at-law and shall be public offices to which section 111 of the Constitution applies.*
- (4) *The Deputy Registrar and every Assistant Registrar shall in the exercise of his office have all and singular the like authorities,*

⁴⁹ Australia Electoral Commission v. Lalara [1994] 53 FCR 156

⁵⁰ The Representation of the People Act Ch. 2:01

⁵¹ Carltona v. The Commissioner of Works [1943] 2 All ER 560

⁵² The Supreme Court Judicature Act Ch. 4:01

powers, duties, immunities and liabilities of the Registrar, except where otherwise provided by Rules of Court.

See too the ***Civil Proceedings Rules (CPR)***⁵³ which provides that the Registrar of the Supreme Court includes the Deputy and the Assistant Registrar.⁵⁴

114. The strength of Senior Counsel, Mr. Ramlogan's submission is also compromised by the reality that this Petitioner, and indeed none of his five (5) counterparts, succeeded in making a presentation of their Petition directly to the person, who at present holds the title of Registrar of the Supreme Court.
115. I turn now to consider the two (2) meanings of "*filing*" as canvassed by learned Senior Counsel in these proceedings. In my view, these two (2) meanings are compatible. It is my view, that the submission as to the three (3) elements as suggested by Mr. Ramlogan, S.C. accords with the reality of the filing procedure in this jurisdiction. Documents are presented to the Registry, they are stamped as evidence that they had been received by the Registrar and they are returned, to the litigant or his representatives.
116. The question, which arises, is at what point of the three (3) stage process does the litigant satisfy the obligation to file.
117. The obligation to file, within a prescribed time, pervades the practice of civil proceedings in this jurisdiction. Litigants are required to institute proceedings by filing claim forms with timelines prescribed by limitation statutes. Failure to do so will inevitably result in their being forever precluded from instituting proceedings. Defendants, similarly, are required to file defences within prescribed time frames. Their failure to do so renders them susceptible to default judgments. It is indisputable that the timelines for filing have become

⁵³ The Civil Proceedings Rules 1998

⁵⁴ The Civil Proceedings Rules 1998 Rule 2.3 Definition of "**Registrar**"

even more unyielding under the *Civil Proceedings Rules (CPR)*⁵⁵. It is therefore critical that a litigant be aware the point at which he has fulfilled his obligation.

118. Having considered all the arguments, I find the conclusion inescapable that the obligation is fulfilled when the documentation is presented to the Registry for filing or, according to Mr. Ramlogan, S.C., when the document is lodged for filing. After that time, the litigant loses control of the process and cannot be faulted if, for negligence or some other reason, the officers at the Registry fail to affix the Court stamp or affix a stamp that bears an incorrect date.
119. In the matter before this Court, the Petitioner through his attorneys-at-law sought the Assistant Registrar of the Sub-Registry of San Fernando on Saturday 19th September, 2015.
120. It was common ground that they were not obligated to act as they did. The Return of the relevant Election Writ had been made on the 11th September, 2015. By Section 107(2) of the *Representation of the People Act*⁵⁶, the Petitioner was allowed eight (8) days within which to present his Petition to the Registrar. It was common ground that this time expired on Saturday 19th September, 2015. However, it was also common ground, that where time expired on Saturday, the Petitioner could properly present the Petition in accordance with Section 159(2) on “*the next day not being Saturday or Sunday or an excluded day*”⁵⁷.
121. The Petitioner did not avail himself of the latitude allowed by Section 159(2)⁵⁸, but acted out of an abundance of caution and sought the Assistant Registrar of the Supreme Court on

⁵⁵ The Civil Proceedings Rules 1998

⁵⁶ The Representation of the People Act Ch. 2:01

⁵⁷ See Section 159(2) of the Representation of the People Act Ch. 2:01

⁵⁸ Ibid

- the Saturday. Clearly, it was the intention of the Petitioner to satisfy the obligation which he carried to present the Petition with eight (8) days as required by Section 107(2)⁵⁹.
122. Mr. Paul did not turn them away. He graciously accepted the documents and made his endorsement at the top of the document, indicating that the process would be completed on the next working day, Monday 21st September, 2015. Thus the first of the three (3) steps had been taken. It is not disputed that the Petitioner and his attorneys-at-law took their leave of Mr. Paul, with the satisfaction that they had fulfilled their obligation.
123. Whether or not the documents were in fact properly stamped on the following Monday depended on a host of unknown factors, over which the Petitioner had no control.
124. Having regard to these undisputed facts, it seems clear that the Petitioner fulfilled his obligations on Saturday 19th September, 2015. Through his attorneys-at-law he presented the Petition for filing on that day. He discharged his obligation and was content to leave the many contingencies to the Assistant Registrars of the Supreme Court and the Registry staff.
125. In my view, the critical date is that on which the Petitioner fulfilled his obligation: the date on which presentation had duly been made for the purpose of Section 107(2) *Representation of the People Act*⁶⁰. In accordance with the timetable set by *Representation of the People Act*⁶¹, notice of such presentation ought to have been made by the 25th September, 2015. It is therefore my view and I hold that the Petitioner served Notice of Presentation of his Petition three (3) days out of the prescribed time.

⁵⁹ See Section 1107(2) of the Representation of the People Act Ch. 2:01

⁶⁰ The Representation of the People Act Ch. 2:01

⁶¹ The Representation of the People Act Ch. 2:01

126. As agreed between the parties, the necessary consequence of such delayed service is the dismissal of the Petition.

Order

127. The Petition of Bonifacio Mahabir, lodged with the Assistant Registrar on the 19th September, 2015, and stamped on the 21st September, 2015, is hereby dismissed.

Dated this 15th April, 2016

M. Dean-Armorer
Judge⁶²

⁶² Ms. Aleema Ameerli, Judicial Research Counsel